

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

VAN E. JOHNSON,

Debtor.

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tmd3574/db

MARCH 18, 2010  
9:00 AM

Chapter 13

Case No: 109-49420-ESS

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 on MARCH 18, 2010 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than three (3) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York  
February 24, 2010

/s/ Marianne DeRosa

MARIANNE DeROSA, TRUSTEE  
100 JERICHO QUADRANGLE, SUITE 208  
JERICHO, NY 11753  
(516) 622-1340

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IN RE:

Chapter 13 109-49420-ESS

VAN E. JOHNSON,  
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APPLICATION

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on OCTOBER 27, 2009, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereafter "The Plan"), dated November 24, 2009, filed with the Court on November 25, 2009, and reflected in the Court's docket as number 15 provides for a monthly Plan payment of \$500.00 per month for a period of 60 months. Additionally, the Plan provides for full repayment to all filed secured and priority proofs of claim, as well as a pro rata distribution to all timely filed general unsecured proofs of claim.

3. The Trustee objects to the confirmation of the Plan because the Debtor's proposed Plan payment is insufficient to pay secured claims in full, and therefore the Debtor cannot comply with the Plan as required by 11 U.S.C. §1325(a)(6).

4. Furthermore, the Debtor has failed to:

- a. provide the Trustee with proof of post-petition mortgage payments seven business days before the first meeting of creditors as required by E.D.N.Y. LBR 2003-1(a)(vi);
- b. provide the Trustee with proof of post-petition mortgage payments seven days before the first date set for confirmation of the Chapter 13 Plan as required by E.D.N.Y. LBR 2003-1(b)(i);
- c. file the original affidavits with the Court as required under subdivisions (b)(ii) and (iii) as required by E.D.N.Y. LBR 2003-1(c).
- d. comply with 11 U.S.C. §1325(a)(6) in that the Debtor has not submitted timely Chapter 13 plan payments to the Trustee, and is \$1,000.00 in arrears through and including February 2010.

5. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. §1307(c)(1) and (c)(5).

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. Section 1307(c).

7. During the pendency of this bankruptcy estate, the Trustee has incurred costs and expenses in the ordinary course of administering this case and seeks reimbursement of \$350.00 to cover these expenses.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case, and granting the Chapter 13 Trustee the sum of \$350.00 to be deducted from the Debtor's net receipts, if any, for administrative costs and expenses incurred during the pendency of this case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York  
February 24, 2010

/s/ Marianne DeRosa  
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 Case No: 109-49420-ESS

VAN E. JOHNSON,

CERTIFICATE OF SERVICE  
BY MAIL

Debtor.

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This is to certify that I, DANI M. BOYER, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

VAN E. JOHNSON  
128 HOWARD AVENUE  
BROOKLYN, NY 11233

KARAMVIR DAHIYA, ESQ.  
325 BROADWAY, STE 304  
NEW YORK, NY 10007

AMERICAS SERVICING COMPANY  
C/O FEIN, SUCH & CRANE, LLP  
28 EAST MAIN STREET, STE 1800  
ROCHESTER, NY 14614

GE MONEY BANK  
C/O RECOVERY MANAGEMENT SYSTEMS CORP  
25 SE 2<sup>ND</sup> AVENUE, STE 1120  
MIAMI, FL 33131

This February 24, 2010

/s/DANI M. BOYER  
DANI M. BOYER, Paralegal  
Office of the Standing Chapter 13 Trustee  
Marianne DeRosa, Esq.  
100 Jericho Quadrangle, Suite 208  
Jericho, New York 11753  
(516) 622-1340

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NOTICE OF MOTION, APPLICATION  
and  
CERTIFICATE OF SERVICE

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MARIANNE DeROSA, TRUSTEE  
100 JERICO QUADRANGLE, SUITE 208  
JERICO, NY 11753  
(516) 622-1340

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